

BOISEY LEVERN NEAL
(Petitioner)

V.

STATE OF MARYLAND
(Respondent)

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IN THE
CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

CASE NO: 02-K-07-001393

PETITION FOR POST CONVICTION RELIEF

Now comes the Petitioner, Boisey Levern Neal, on this 1st day of April 2014, in
Proper Person "Pro Se 'humbly and respectfully filing this Petition for Post Conviction
Relief to this Honorable Reviewing Court under the guide rules of law governed by
Md. Rule §4-401 thru 4-408 and avers:

1. That he is now in the custody of the Maryland Correction Training Center, at 18800 Roxbury Rd. Md, 21746.
2. That Mr. Warden J. Phillip Morgan is the Warden of the Maryland Correction Training Center, at 18800 Roxbury Rd. Md, 21746.
3. That he is an indigent offender and cannot afford to pay court cost or attorney fees and would like for the Honorable Court to appoint counsel to for representation at the Post Conviction Hearing.

FILED
CRIMINAL DEPARTMENT

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Petitioner Neal hereby now brings forth these alleged Constitution Violations of issues under the following Jurisdictional Laws, Case(s), and Rules:

Table of Citations

(A) Maryland State Commission on Criminal Sentencing Policy, Maryland

Sentencing Guidelines Manual

(B) Md. Rule 4-345(a)

(C) Cuffley v. State, 416 Md. 568; 7 A.3d 557; (2010) Md.

(D) Matthews v. State, 197 Md. App. 365; 13 A.3d 834; (2011)

(E) Solorzano v. State, 397 Md. 661(2007)

(F) Chaney v. State, 397 Md. 460 (2007)

(G) Alston v. State, 38 Md. App. 611.

(H) Melvin J. White v. State, 41 Md. App.514

THE PETITIONER PRESENTS THE FOLLOWING ISSUES AND ALLEGATIONS OF ERROR.

1. TRIAL COURT FAILED TO ENSURE THAT THE PETITIONER RECEIVE THE SENTENCE WITHIN THE GUIDELINES OF 10 YEARS TO 15 YEARS FOR THE GUILTY PLEA.
2. THE PETITIONER WAS NOT TOLD THAT A SENTENCE GREATER THAN THE AGREED UPON SENTENCE OF 10 YEARS TO 15 YEARS COULD BE IMPOSED BY IMPOSING A SUSPENDED PORTION EXCEEDING THE GUIDELINE OF 10 YEARS TO 15 YEARS.
3. THE COURT DID ACCEPT THE PLEA, BUT DID NOT EMBODY THE JUDGMENT OF THE THE AGREED SENTENCE.

4. THE PETITIONER HAS BEEN TOLD BY THE STATE THAT A SENTENCE FROM A 1995 CONVICTION THAT WAS RE-IMPOSED FROM BALTIMORE COUNTY CASE: 03-K-95-001261, COULD BE IMPOSED TO RUN "CONSECUTIVE" TO THE ANNE ANNE ARUNDEL COUNTY SENTENCE CASE: 02-K-07-001393 AFTER THE 2 YEAR SENTENCE FROM BALTIMORE COUNTY HAD ALREADY EXPIRED... AND THE SENTENCING SEQUENCE IS NOT IN ORDER, BALTIMORE COUNTY SHOULD BE "FIRST", AND CANNOT BE MOVED TO RUN BEHIND THE ANNE ARUNDEL COUNTY SENTENCE.

5. THE PETITIONER HAS SERVED 7 YEARS ON THE 10 YEAR SENTENCE FOR COUNT 6, THAT WAS SUSPENDED TO 5 YEARS THAT WAS SAID TO START ON JUNE 14TH, 2007. SO ONLY 5 YEARS SHOULD BE LEFT WITHIN THE GUIDELINES.

6. THE PETITIONER FILED A MOTION TO CORRECT AN ILLEGAL SENTENCE

THAT WAS DENIED WITHOUT A HEARING.

7. COUNT 1, THAT WAS IMPOSED AS A 20 YEAR SENTENCE
HAS BREACH THE PLEA AGREEMENT...

STATEMENT OF CASE

Petitioner entered a plea of guilty to the charges of Armed Robbery count 1, and, the use of a handgun in a crime of violence count 6, at a hearing the Circuit Court for Anne Arundel County on February 5th, 2008.

MR. DUNTY: [THE STATE] Your Honor, I have a plea, if the Court will allow me. It's K-2007-1393, State versus Boisey Levern Neal. Michael Dunty, D-U-N-T-Y, on behalf of the state. Mr. Terech:[Defense Counsel] for the record, Pete Terech on behalf of Mr. Neal. Mr. Neal. is present and at counsel table. Also present at counsel table is Annette Wagner, LCSWC, on behalf of Mr. Neal.

MR. DUNTY: [THE STATE] Your Honor, it is my understanding the Defendant will be entering a guilty plea to count 1, which is Armed Robbery, as well as count 6, which is the use of a handgun in a crime of violence. On a finding of guilt in that sentence—
(Aside)

MR. DUNTY: [THE STATE] Court's indulgence. (Pause)

MR. DUNTY: [THE STATE] count 6, use of a handgun in a crime of violence. Upon the finding of guilty, at sentencing, the state will nolle prosequi to the remaining counts. As guidelines for these offenses are of 10 years to 15 years. Clearly, count 6 carries a Mandatory Minimum of five years without parole. **[T]he State will be asking for active incarceration "within the guidelines" of 10 to 15 years. Defense is free to argue for whatever they feel is appropriate down to the five years without parole.**

As part of the plea the state is going to-- the **Defense has agreed and the state would like to** play a 30 second store surveillance. So as Mr. Terech qualifies the Defendant.

The Circuit Court engaged Petitioner in a colloquy to ensure that Petitioner's plea was knowing and voluntary. The Court then recited the factual basis for the plea.

THE COURT: All right. The Court finds sufficient factual basis for it, the Court enters a guilty finding to count 1, Armed Robbery, count 6, use of a handgun in a crime of violence. And the video tape clearly shows that the weapon is capable of firing a projectile by gun power. I wanted to order a Pre-Sentence Investigation.

The Court now sets a date for sentencing; **THE COURT: All right. Why don't we set this for 1:30 for sentencing on Friday, March 28th. The Court will order a Pre-Sentence Investigation.**

On March 28, 2008, the following the sentencing hearing was held and the Court recalled Correctly that on February 5th, 2008, the Petitioner was tried and did pled guilty to count 1, Armed Robbery, count 6, use of a handgun in a crime of violence and that a Pre-Sentence Investigation was ordered.

THE COURT: All right. Mr. Neal was before the
count on February 5th, 2008. Was tried and pled guilty to count 1, Armed Robbery,
count 6, use of a handgun in a crime of violence and that a Pre-Sentence Investigation
was ordered. The Court: [Defense Counsel] MR. Terech do you want to take a few
minutes and review that with your client? The [Defense Counsel] MR. Terech explain to
the Petitioner the Pre-Sentence Investigation and said that he would ask for a flat
sentence of 10 years. [Defense Counsel] MR. Terech did not tell the Petitioner that he
could receive a sentence of 30 years suspended down to the plea agreement of 10 to 15
years .

The Petitioner understood only that defense counsel MR. Terech was about to argue for 10 years and that's all that the [Defense Counsel] MR. Terech told the Petitioner and what that the guidelines were, 10 to 15 years. **The Court restated its understanding of the agreement: The State's Attorney indicated that they were seeking a guideline sentence--no, the State's Attorney indicated the guidelines were 10 to 15 years. They were asking for jail within that range. And that they would not pursue a subsequent motion. The Court ask [Defense Counsel] MR. Terech and [THE STATE] MR. DUNTY, did they want anytime?**

[Defense Counsel] MR. Terech says no and the Court says alright. MR. DUNTY, [THE STATE] you ready to go forward? [THE STATE] MR. DUNTY: I am, your Honor.

See transcript of the plea agreement proceedings. Page 3 and 4.

The Petitioner has clearly shown what the guidelines were set as for the sentence

the Petitioner would receive at sentencing after [THE STATE] MR. DUNTY: gave his word and said that if the Petitioner plead guilty on February 5th, 2008, that at sentencing the State would ask for active incarceration "within the guidelines" of 10 to 15 years, and Defense is free to argue for whatever they feel is appropriate down to the five years without parole.

The Court accepted the plea and sentence the Petitioner to the following sentences:

"Sir, in terms of count 6, which is the handgun in a crime of violence, its 10 years to the Division of Corrections""I will suspend all but five years. That will begin on June 14th, 2007"

In terms of the armed robbery, you actually - - you did more then just brandish the weapon in this armed robbery. You actually used the weapon.

Count 1, for armed robbery, 20 years in the Division of Corrections. Suspend all but 10 years. That sentence is to be consecutive in count 6.

So the overall sentence is 30 years, all suspend but 15 years.

Upon your release, sir, you have five years supervised probation.

See proceedings of Sentencing Transcript pg. 21 lines 10 thur 22

Post Conviction Relief

It is at this point that the **Petitioner now seeks Post Conviction Relief. The Petitioner Argues that when the Court accepted the plea and did sentence the Petitioner to a 20 year sentence for Count 1, for armed robbery, that it is at this point that the plea Agreement has been breach. The Court even makes it plain and simple by stating on the record "So the overall sentence is "30 years," all suspend but 15 years." The plea Agreement call for a sentence" within the guidelines" of 10 to 15 years, if the Petitioner plead guilty. This what the State agreed upon and the Court did accept The plea.**

CRIMINAL LAW -- BINDING PLEA AGREEMENT; INTERPRETATION OF BINDING PLEA TERM TO SENTENCE "WITHIN THE GUIDELINES":

If the parties to a binding plea agreement agree that the defendant will be sentenced "within the guidelines" without making clear on the record of the plea proceeding that the "**guidelines sentence**" refers only to actual incarceration, then the court may not impose a sentence that includes a "**suspended portion in excess of the maximum**" sentence provided by the guidelines.

See **RAYMOND B. CUFFLEY, JR. v. STATE OF MARYLAND**
416 Md. 568; 7 A.3d 557; 2010 Md.

Maryland Rule 4-243 governs plea agreements and addresses the procedures to be followed when the State and a defendant have entered into a plea agreement. That rule provides, in pertinent part:

(a) Conditions for agreement. (1) Terms. The defendant may enter into an agreement with the State's Attorney for a plea of guilty or nolo contendere on any proper condition, including one or more of the following:

That the parties will submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration pursuant to section (c) of this Rule.

Agreements of sentence, disposition, or other judicial action.

1. Presentation to the court.

If a plea agreement has been reached pursuant to subsection of this Rule for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition, or other judicial action, the defense counsel and the State's Attorney shall advise the judge of the terms of the agreement when the defendant pleads. The judge may then accept or reject the plea and, if accepted, may approve the agreement or defer decision as to its approval or rejection until after such pre-sentence proceedings and investigation as the judge directs.

2. Not binding on the court. The agreement of the State's Attorney relating to a particular sentence, disposition, or other judicial action is not binding on the court unless the judge to whom the agreement is presented approves it.

3. (Approval of plea agreement.)

If the plea agreement is approved, the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement.

4. Record of proceedings.

All proceedings pursuant to this Rule, including the defendant's pleading, advice by the court, and inquiry into the voluntariness of the plea or a plea agreement shall be on the record. If the parties stipulate to the court that disclosure of the plea agreement or any of its terms would cause a substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, or unnecessary annoyance or embarrassment, the court may order that the record be sealed subject to terms it deems appropriate.(Emphasis added.)

Maryland Rule 4-242(b), (c) (addressing the requirements of the guilty plea itself and mandating, inter alia, that the guilty plea be offered by the defendant personally on the record and in open court, and that the trial judge "may not accept a plea of guilty until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof," during which the court must "determine [] and announce [] on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea . . .").

Maryland Rule 4-243 expressly states that the terms of the plea agreement are to be made plain on the record, in the presence of the defendant, for the court to hear and accept or reject. The terms, moreover, must be made "'express'" and "'clearly agreed upon before the guilty plea is accepted."

See *Solorzano v. State*, 397 Md. 661, 672, 919 A.2d 652, 658 (2007) (quoting *Tweedy v. State*, 380 Md. 475, 487, 845 A.2d 1215, 1222 (2004)).

Plea bargains are likened to contracts. *Tweedy*, 380 Md. at 482, 845 A.2d at 1219. Consequently, "'contract principles should generally guide the determination of the proper remedy of a broken plea agreement.'"

fairness and equity govern the enforcement of plea agreements. *Brockman*, 277 Md. at 698, 357 A.2d at 383. Therefore, when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled. *Id.* at 694, 357 A.2d at 381 (quoting *Santobello*, 404 U.S. at 262).

Judges are required to adhere to their part of the bargain.

Judges, too, are required to adhere to their part of the bargain. *Tweedy*, 380 Md. At 485, 845 A.2d at 1221 (stating that, once the court accepts a plea bargain, the court is "required to impose the agreed upon sentence, assuming that all the conditions imposed upon the defendant were fulfilled"); *State v. Poole*, 321 Md. 482, 496, 583 A.2d 265, 272 (1991) (stating that "fairness and equity required the trial judge to be held to his bargain, vis-a-vis sentencing").

Maryland Rule 4-243 mandates that, before the court accepts the defendant's guilty plea, defense counsel and the State's Attorney, on the record and in the presence of the defendant, "shall advise the judge of the terms of the agreement." The Rule also mandates that the court, upon accepting and approving the agreement, "shall embody in the judgment the agreed sentence[.]" The principal purpose of Maryland Rule 4-243 is to eliminate the possibility that the defendant may not fully comprehend the nature of the agreement before pleading guilty. Any less would offend notions of due process.

See *Santobello*, 404 U.S. at 261-62 ("[T]he plea must, of course, be voluntary and knowing, and, if it was induced by promises, the essence of those promises must in some way be made known.").

The Court of Special Appeals conclude that, by its express terms, Maryland Rule 4-243 requires strict compliance with its provisions. We further conclude, as the natural consequence of requiring strict compliance with the Rule, that any question that later arises concerning the meaning of the sentencing term of a binding plea agreement must be resolved by resort solely to the record established at the Maryland Rule 4-243 plea proceeding.

The record of that proceeding must be examined to ascertain precisely what was presented to the court, in the defendant's presence and before the court accepts the agreement, to determine what the defendant reasonably understood to be the sentence the parties negotiated and the court agreed to impose.

The test for determining what the defendant reasonably understood at the time of the plea is an objective one.

It depends not on what the defendant actually understood the agreement to mean, but rather, on what a reasonable lay person in the defendant's position and unaware of the niceties of sentencing law would have understood the agreement to mean, based on the record developed at the plea proceeding. For this reason that extrinsic evidence of what the defendant's actual understanding might have been is irrelevant to the inquiry.

The Petitioner Boisey Levern Neal 349-871 did plead guilty, and when a defendant's guilty plea rests in part on a promise concerning disposition, and the State or the court violates that promise, "the accused may obtain redress by electing either to have his guilty plea vacated or to leave it standing and have the agreement enforced at resentencing," so that the plea bargain be honored.

Plea Agreements

Although Md. R. 4-243(c) (1) imposes upon a trial court no obligation to accept any particular sentence agreed upon by the State and a defendant, Md. R. 4-243(c) (3) requires the trial court, if it has "approved the agreement," to fulfill the terms of that agreement if the defendant pled guilty in reliance on the court's acceptance of the agreement. In addition to the requirements of Md. R. 4-243, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain be honored.

Illegal Sentence

The Petitioner supports his argument that his sentence is illegal with three recently decided cases from the Court of Special Appeals, **Cuffley v. State**, 416 Md. 568, 7 A.3d 557 (2010), and **Baines v. State**, 416 Md. 604, 7 A.3d 578 (2010), **Matthews v. State**, 197 Md. App. 365, 387, 13 A.3d 834, 847(2012).

In those cases, when the record of a plea proceeding reflects that a defendant reasonably could have understood that the sentencing court agreed to be bound to a certain maximum sentence, inclusive of "any suspended portion", then the court that imposes a sentence in excess of that maximum breaches the plea agreement.

In that circumstance, the original sentence is illegal and the court must re-sentence the defendant, if that is the defendant's wish, in accordance with the terms of the plea agreement. See **Cuffley**, 416 Md. at 586, 7 A.3d at 567; **Baines**, 416 Md. at 620, 7 A.3d at 588.

Maryland Rule 4-345(a) permits a court to correct an illegal sentence at any time. "If a sentence is 'illegal' within the meaning of that section of the rule," that is, the illegality "inheres in the sentence itself," then "the defendant may file a motion in the trial court to correct it, notwithstanding that (1) no objection was made when the sentence was imposed, (2) the defendant purported to consent to it, or (3) the sentence was not challenged in a timely-filed direct appeal" or at some other previous procedural juncture. **Chaney v. State**, 397 Md. 460, 466, 918 A.2d 506, 509-10 (2007). If the court denies a motion to correct such an illegality, the defendant

has the right to challenge the ruling on direct appeal. Id. at 466-67, 918 A.2d at 510.

The Court of Special Appeals have held that a sentence that exceeds the sentence to which the parties agreed as part of a plea agreement is an illegal sentence within the meaning of Rule 4-345(a) and the Sentencing Guidelines Manual contains the same declarations. See Maryland State Commission on Criminal Sentencing Policy, Maryland Sentencing Guidelines Manual ch. 13.1, at 55 (2010), and Dotson v. State, 321 Md. 515, 521-22, 583 A.2d 710, 713 (1991)

The Court of Special Appeals recognized that, although Rule 4-243(c)(1) imposes upon "a trial court . . . no obligation to accept any particular sentence agreed upon by the State and a defendant," Rule 4-243(c)(3) requires the trial court, if it has approved the agreement, to "fulfill the terms of that agreement if the defendant pled guilty in reliance on the court's acceptance." Id. at 669-70, 919 A.2d at 657.

Applying the dictates of Md. Rule 4-243, they held that the trial court had accepted the plea agreement and Solorzano was entitled to specific performance of it. Id. at 670, 919 A.2d at 657. The Court of Special Appeals recognized, in addition to the requirements of Rule 4-243, that, "[o]nce a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain be honored." Id. at 673, 919 A.2d at 659 (citing Santobello v. New York, 404 U.S. 257, 262, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971)). Relevant to the issue we consider here, we gave no indication that the sentence imposed in breach of the binding plea agreement could not have been corrected by review of the court's denial of Solorzano's Rule 4-345(a) motion.

Consistent with the holding of Solorzano, and more directly on point with the case at bar, is our decision in Cuffley.

In Cuffley we considered "whether . . . a judge who agrees to be bound to the terms of a plea agreement that calls for a sentence 'within the guidelines' may impose a sentence that involves a term of incarceration that exceeds the guidelines but suspends all but the part of the sentence that falls within the guidelines." 416 Md. at 573, 7 A.3d at 560.

In Cuffley v. State, he pleaded guilty to robbery pursuant to a plea agreement that the State would "recommend a sentence within the guidelines . . . [of] four to eight years." *Id.*, 7 A.3d at 560. The trial court repeated its understanding of the agreement, that the court would "impose a sentence somewhere within the guidelines. The guidelines in this case are four to eight years." *Id.* at 574, 7 A.3d at 560. The court ensured that defendant's guilty plea was knowing and voluntary and then accepted the plea agreement and bound itself to its terms. *Id.*, 7 A.3d at 560. At the sentencing hearing, the court imposed a sentence of fifteen years, suspend all but six. *Id.*, 7 A.3d at 560.

Several years later, Cuffley filed a motion pursuant to Rule 4-345(a) to correct what he believed was a sentence that violated the sentencing cap to which the court had bound itself. *Id.* at 574-75, 7 A.3d at 561. The sentencing court denied the motion, reasoning that "suspended time and conditions of probation are within [the court's] discretion," and the court's discretionary powers were "alluded to . . . even if not specifically stated on the record." *Id.* at 576, 7 A.3d at 561

Analyzing Maryland Rule 4-243(c), which mandates that a court that has accepted and approved a plea agreement "shall embody in the judgment the agreed sentence."

The Petitioner ask this Honorable Post Conviction Court to see *Matthews v. State*, 419 Md. 646, 20 A.3d 115 (2011).

The Court of Special Appeals petition granted a for writ of certiorari, *Matthews v. State*, 419 Md. 646, 20 A.3d 115 (2011), to consider the following question:" Whether a plea agreement, conditioned on an agreed upon 'capped' term of years, results in an illegal sentence when the trial court sentences the Defendant to life, but suspends a portion of the life sentence to make the non-suspended portion not exceed the agreed upon 'cap'?" The Court of Special Appeals deem the sentence illegal.

The Petitioner ask this Honorable Post Conviction Court to see that the plea hearing shows that the participants all agreed to a sentence "within the guidelines." The State and the defense counsel noted, on the record, that the proper sentence was a guideline sentence. See plea hearing on transcript pg. 3, lines 23-24. T]he State will be asking for active incarceration "within the guidelines" of 10 to 15 years. And when looking at the sentencing hearing on transcript pg. 7, lines 16thur 23, it is clear the parties intended to(and did) incorporate the Maryland State Commission on Criminal Sentencing Policy, Maryland Sentencing Guidelines Manual, 12.1, p.42 (2005) (stating, "[s]uspended time is not considered in determining whether the sentence falls within the recommended guidelines.

The guidelines range represents only non-suspended time." The Petitioner ask this Honorable Post Conviction Court to see that once again the State mentions the Sentencing Guidelines as indicated by the PSI; T]he State: So, there's nothing in this PSI that Justifies a sentence, an active sentence, that is not "within the sentencing guidelines" of 10 to15 years.

THE COURT: All right. Mr.Terech. Mr.Terech:

[Defense Counsel] Surprisingly I am not going to differ too much in the outcome With Mr. Dunty. I agree – what I would ask for would be a sentence – a flat sentence of 10 years to Patuxent. Now the Petitioner ask this Honorable Post Conviction Court to please see Sentencing Hearing on Transcript pg. 14, lines 20 Thur 25, the [Defense Counsel] Mr.Terech states the following: Mr.Terech: I was fully intending, you know, from the onset to come in here and ask for a five year sentence, but it's -- been deem that that's not what is appropriate for his level of treatment need, and that's why we're asking for the 10 year sentence. The 10 year is within the guidelines. It is within what the state is asking for. The Petitioner would like to clearly show that when [Defense Counsel] Mr.Terech says on pg. 14, lines 23 thru 25, and that's why we're asking for the 10 year sentence; The 10 year is within the guidelines; It is within what the state is asking for; this statement shows that the parties did negotiate and develop an agreement, and it should be respected and the process should be enforce by the terms of that agreement, which were 10 years to 15 years.

Therefore, in construing this plea agreement of 10 years to 15 years, it should be consider that the parties were not creating their own nuanced [meaning] definition of the word "sentence," but rather were adopting the definition provided by the guidelines. The guidelines make clear that a sentence within its "range" represents only "non-suspended, or executed time." See the Maryland State Commission on Criminal Sentencing Policy, Maryland Sentencing Guidelines Manual, 8.1.pg 36 (2001).

THE COURT DID AGREE TO THE GUIDELINE SENTENCE

Once again, the Court did agree to the guideline sentence and it has already been shown on the Sentencing Hearing Transcript pg.3, line 23 thru 25, pg. 4, line 1, that the Court made it clear as to the "range" of 10 years to 15 years were what the state ask for in return for a guilty plea at sentencing. The state did not pick and choose among its many provisions, but relied on the sentencing guidelines in its entirety, this was not an accident on how the plea agreement for a sentence "within the guidelines" of 10 years to 15 years were develop; not by accident," but by the Maryland State Commission on Criminal Sentencing Policy, Maryland Sentencing Guidelines Manual 8.1, p.36 (2001). The State must follow these relied upon rules. The States Attorney did not correct the Court by making a statement when the Court imposed a 30 year sentence, after the Court accept the plea agreement.

The States Attorney did give its word that at sentencing they would be asking for an active sentence within the guidelines of 10 years to 15 years.

As it was stated in Alston v. State, 38 Md. App. 611; when the State's

Attorney has given his word in the form of a plea bargain and that bargain is accepted by the trial court, it behooves the State's Attorney to make every reasonable effort to correct any deviation from the bargain when the deviation is called to his attention. His failure to do so, as here, renders "valueless the State's word" and "effectively . . . [erodes] the accused's trust in the integrity of the State."

Sturgis v. State, 25 Md. App. 628, 637, 336 A.2d 803, 807 (1975).

Moreover, the State should not stand idly by when it knows that its word is being traumatized, and like Pilate, proclaim its hands clean because it kept its word by making the original accepted recommendation. The plea agreement was, if the Petitioner plead guilty to Count 1, for armed robbery, and Count 6, handgun use in a crime of violence, that the Petitioner would receive a sentence "within the guidelines" of 10 years to 15 years. This what the State agreed upon and the Court did accept the plea. The Court imposed a 10 year sentence for Count 6, which was suspended down to five years and was given a starting date of June 14th, 2007. The imposed 10 year sentence for Count 6, is a 10 year sentence nonetheless, and the suspended time of five years does not change the fact that Court imposed 10 years of the 15 years by the agreed upon cap of "within the guidelines."

So, a 20 year sentence for Count 1, does indeed violated the plea by 15 year, no matter that it is suspended down to 10 years. When the Court states on the record, "So the overall sentence is "30 years" all suspend but "15 years," clearly shows once more that this not the agreement, and the sentence at this point becomes illegal.

See *Matthews v. State*, 197 Md. App. 365; 13 A.3d 834; (2011) Md, *Cuffley v. State* 416 Md. 568; 7 A.3d 557; (2010) Md.

The Petitioner ask the Honorable Post Conviction Court to please see the Unfairness that has already taken place with how the Petitioner has been serving His sentence. On June 14th, 2014, the Petitioner would have serve 7 years day for Day on a 10 year sentence that was suspended down to 5 years. This is very confusing and the Petitioner ask when does Count 6, reach an expiration date since it was said to start on June 14th, 2007?

In short, the sentencing term of the agreement to which the court bound itself, when determined by reference to what Petitioner reasonably understood that term to be at the time he pleaded guilty, was that the court would impose a total sentence of no more than Fifteen years, a portion of which the court in its discretion might suspend in favor of a period of probation, with conditions.

But even if the sentencing term of the plea agreement as expressed at the plea proceeding was ambiguous (a point Petitioner concedes), he is entitled to have the ambiguity resolved in his favor. See Solorzano, 397 Md. at 673, 919 A.2d at 659 (any ambiguity in plea agreement must be resolved against the State).

The Court of Special Appeals held in Cuffley v. State 416 Md, that regardless of whether the sentencing term is clear or ambiguous, the court breached the agreement by imposing a sentence that exceeded a total of "eight years" incarceration. The sentence is illegal and, upon Petitioner's motion, the Circuit Court should have corrected it to conform to a sentence for which Petitioner bargained and upon which he relied in pleading guilty of "within the guidelines" of Four to eight years.

Our holding should not be interpreted as foreclosing a binding plea agreement that provides for a so-called "split sentence" like the sentence imposed in this case, that is, a sentence that exceeds the guidelines, with all of it suspended save for that portion of the sentence that falls "within the sentencing guidelines."

To the contrary, such plea agreements are entirely permissible, if, as we noted in *Solorzano*, 397 Md. at 674 n.2, 919 A.2d at 659 n. 2, either the State or defense counsel makes that term of the agreement absolutely clear on the record of the plea proceeding and the term is fully explained to the defendant on the record before the court accepts the defendant's plea.

The Petitioner ask the Honorable Post Conviction Court to rule in Favor of the Petitioner and re-sentence the Petitioner at the point were the plea bargain was breach and that is at Count 1, of 20 years... The Petitioner ask that a 5 year suspended sentence be given at re-sentencing because the Petitioner has already serve the 10 year suspended sentence for Count 6, that has been expired by 2 years. [Defense Counsel] Mr. Pete Terech, did ask for a flat sentence of 10 years when he First started negotiating for a sentence within the guidelines of 10 years to 15 years, So the Petitioner has indeed served a flat sentence10 years technically.

See Sentencing Hearing Transcript pg. 7, line 22, were [Defense Counsel] Mr. Pete Terech's statement about a flat sentence of 10 years ("within the guidelines").

It would only be fair for the Court to uphold its agreement to the Petitioner.

As Mr. Justice Potter Stewart has observed, "[f]airness is what justice really is."

See *Alston v. State*, 38 Md. App. 611.

REFLIEF SOUGHT

Petitioner prays this Honorable Post Conviction Court that:

1. An order for a hearing be issued so that proof of the allegations made herein can be offered.
2. After a hearing on the merits, an order be issued granting Petitioner the right to file a Belated Appeal.
3. An order be issued directing that Respondent produce Petitioner at all hearings to be held by this Court concerning Petitioner's allegations.
4. Petitioner be allowed to freely amend this petition.
5. that the Petitioner be re-sentence at the starting point of the Breach of the plea agreement which was a 20 year sentence for Count 1, and that the Petitioner be given a 5 year suspended sentence for Count 1, that would in be **"within the guidelines" of the 10 years to 15 years** that was agree upon.
6. Petitioner prays that this Honorable Post Conviction Court, in the cause of Justice, apply any and all appropriate law, Rules or Citations that are Favorable to the Petitioner that he, himself, has omitted or is unaware of and Failed to supply the court because of his **inexperience or lack of knowledge**.

Respectfully and Sincerely Submitted,

Boisey Levern Neal

**Boisey Levern Neal 349-871
18800 Roxbury Rd.
Hagerstown, Md. 21746**

CERTIFICATE OF SERVICE

I, Boisey Levern Neal, HEREBY CERTIFY THAT on this 1st day of April 2014, a copy of the foregoing Petition for Post-Conviction Relief was mailed or hand-delivered, to the Office of the State's Attorney for Anne Arundel County.

Boisey Levern Neal

Boisey Levern Neal - 349871
Petitioner,
M.C.T.C.
18800 Roxbury Road
Hagerstown, Maryland 21746

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

----- x
STATE OF MARYLAND

v.

BOISEY LEVERN NEAL,

Defendant.

ORIGINAL

Criminal No. K-2007-001393

Annapolis, Maryland

February 5, 2008

PLEA HEARING

WHEREUPON, proceedings in the above-entitled matter
commenced.

BEFORE: THE HONORABLE WILLIAM C. MULFORD, II, Judge

APPEARANCES:

FOR THE STATE:

MICHAEL DUNTY, Esq.
Office of the State's Attorney
7 Church Circle, Suite 200
Annapolis, MD 21401

FOR THE DEFENDANT:

PETER TERECH, Esq.
Office of the Public Defender
1700 Margaret Avenue
Annapolis, MD 21401

P R O C E E D I N G S

1
2 MR. DUNTY: ~~Your Honor, I have a plea, if the~~
3 Court will allow me. It's K-2007-1393, State versus
4 Boisey Levern Neal. Michael Dunty, D-u-n-t-y, on behalf of
5 the State.

6 MR. TERECH: For the record, Pete Terech on behalf
7 of Mr. Neal. Mr. Neal is present and at counsel table. Also
8 present at counsel table is Annette Wagner, LCSWC, on behalf
9 of Mr. Neal.

10 MR. DUNTY: ~~Your Honor, it is my understanding the~~
11 ~~Defendant will be entering a guilty plea to Count 1, which is~~
12 ~~armed robbery, as well as Count 6, which is the use of a~~
13 ~~handgun in a crime of violence.~~

14 On a finding of guilt in that sentence --
15 (Aside)

16 MR. DUNTY: Court's indulgence.
17 (Pause)

18 MR. DUNTY: ~~Count 6, use of a handgun in the crime~~
19 ~~of violence. Upon the finding of guilt, at sentencing, the~~
20 ~~State will not press the remaining counts. As guidelines for~~
21 ~~these offenses are 10 to 15 years. Clearly, Count 6 carries~~
22 a mandatory minimum of five years without parole.

23 ~~The State will be asking for active incarceration~~
24 ~~within the guidelines of 10 years to 15 years. Defense is~~
25 ~~free to argue for whatever they feel is appropriate down to~~

~~the five years without parole.~~

~~As part of the plea the State is going to -- the~~

~~Defense has agreed and the State would like to play a~~

~~30-second store surveillance. So as Mr. Terech qualifies the~~

~~Defendant~~ if I could just have the podium --

6 THE COURT: Sure.

7 MR. DUNTY: -- computer turned on.

8 THE COURT: Okay.

~~MR. TERECH: Your Honor, in other aspects, he was~~

~~also qualified as a subsequent offender in the crime of~~

~~violence, and the enhanced penalties there would not be~~

~~proceeded with as part of the plea agreement. And as~~

~~indicated the Defense is free to ask for the minimum and live~~

~~incarceration, which is the five without.~~

15 THE COURT: All right. Do you --

16 MR. TERECH: ~~However, obviously there is no~~

17 ~~agreement~~ as to the length of incarceration.

18 ~~THE COURT: Do you think a PSI would be~~

19 ~~appropriate.~~

20 ~~MR. TERECH: Well --~~

21 ~~THE COURT: -- or are you ready to go forward.~~

22 ~~MR. TERECH: I am not sure a PSI is going to be~~

23 ~~helpful but I am asking for a deferred sentencing because as~~

24 ~~the Court can see from the history of this case, there have~~

25 ~~been previous allegations of incompetency as well as an NCR.~~

1 THE DEFENDANT: Yes, Sir.

2 ~~THE COURT: At this time, Mr. Neal, are you guilty~~
3 ~~of committing this armed robbery while you used a handgun?~~

4 ~~THE DEFENDANT: Yes, Sir.~~

5 ~~THE COURT: Do you -- are you waiving your right to~~
6 ~~a court trial and a jury trial?~~

7 ~~THE DEFENDANT: Yes, Sir.~~

8 THE COURT: Do you understand, Mr. Neal, I am not
9 going to have any motions to decide if when the police
10 arrested you, if it was lawful, if the police took a
11 statement from you or a confession, I am not going to decide
12 if it's lawful. If they identified you by pictures or
13 videos, I am not going to decide if it's lawful. If there is
14 any search and seizure issues, I am not going to decide if
15 it's lawful. ~~It's a guilty plea today. Do you understand~~
16 ~~that?~~

17 ~~THE DEFENDANT: Yes, Sir.~~

18 THE COURT: Now, Mr. Neal, if you were born in the
19 United States of America this case will not get you kicked
20 out of the country. But if you are not a U.S. citizen you
21 could be deported. You understand that?

22 THE DEFENDANT: Yes, Sir.

23 THE COURT: Now, Mr. Neal, you're going to have the
24 right to note an appeal to the Court of Special Appeals after
25 this case is over. But the Court of Special Appeals can only

1 consider -- you okay?

2 THE DEFENDANT: Yes, Sir.

3 ~~THE COURT: Okay. The court of Special Appeals can~~
4 ~~only consider whether or not I had the authority or the~~
5 ~~jurisdiction to hear the case, whether I give you a lawful~~
6 ~~sentence, whether today's plea is free and voluntary, or~~
7 ~~whether or not your sentence is or whether or not your~~
8 ~~attorney did what he was supposed to do. Do you understand~~
9 ~~that?~~

10 ~~THE DEFENDANT: Yes, Sir.~~

11 THE COURT: Now, at this point in time, Mr. Neal,
12 do you have any questions for me?

13 THE DEFENDANT: No, Sir.

14 THE COURT: ~~You understand we're not going to go~~
15 ~~forward on your not criminally responsible plea? You're~~
16 ~~standing up today saying, "Judge, I did it, I am responsible."~~
17 ~~You understand that?~~

18 ~~THE DEFENDANT: Yes, Sir.~~

19 ~~THE COURT: Now, I've told you I am going to~~
20 ~~postpone your sentencing and I will let you come back at a~~
21 ~~later date because Mr. Terech wants me to hear from your~~
22 ~~doctors, okay?~~

23 THE DEFENDANT: Yes, Sir.

24 THE COURT: All right. Do you have any questions
25 for me?

1 THE DEFENDANT: No, Sir.

2 ~~THE COURT: All right. Mr. Neal, at this point in~~
3 ~~time I find that you have freely, knowingly and voluntarily~~
4 ~~tendered a guilty plea. And freely, knowingly and~~
5 ~~voluntarily waived your right to a court and a jury trial in~~
6 ~~this case.~~ You okay, sir? I see you putting your hand on
7 your --

8 THE DEFENDANT: Yes, Sir.

9 THE COURT: -- heart. Or is your stomach just
10 rumbling? You all right?

11 THE DEFENDANT: Yes, Sir..

12 THE COURT: Do you want a glass of water?

13 THE DEFENDANT: Please.

14 THE COURT: Why don't you have a glass of water.
15 Have a seat, Mr. Neal.

16 (Aside - Court discusses other matters.)

17 THE COURT: All right. Mr. Neal, did your monitor
18 come on in front of you?

19 THE DEFENDANT: Yes, Sir.

20 THE COURT: You can have a seat, sir. You don't
21 have to stand up. Okay. Unless I tell you to stand up, you
22 can just have a seat, Mr. Neal. Okay.

23 (Pause)

24 THE COURT: Go ahead, Mr. Dunty, whenever you're
25 ready.

1 He said he couldn't remember what happened in the
2 robbery other than he had a gun in each one of them. He
3 stated he never intended on hurting anyone, only shot off a
4 round to scare people.

5 He was shown the surveillance photos from the
6 Crown Gas Station. He looked at them and said that was
7 definitely him, but he had lost weight since the incident.
8 He then initialed the photographs, recorded the date and
9 time and admitted that it was in fact he who did those
10 robberies and that he used his wife's minivan during that
11 time period.

12 As I indicated the witnesses would have identified
13 the Defendant as the person who admitted to committing the
14 armed robbery. All events occurred in Anne Arundel County,
15 Your Honor.

16 THE COURT: Any additions or corrections?

17 MR. TERECH: No corrections as to the factual
18 statement.

19 ~~THE COURT: All right. The Court finds sufficient~~
20 ~~factual basis for it, the Court enters a guilty finding to~~
21 ~~Court 1, armed robbery, Count 6, use of a handgun in a crime~~
22 ~~of violence.~~ And the video tape clearly shows that the
23 weapon is capable of firing a projectile by gunpowder.

24 ~~I wanted to order a Pre-Sentence Investigation.~~

25 Counsel, are you available in the afternoons of Friday,

This is A Copy of the SENTENCING HEARING
ON MARCH 28th, 2008.

"All" of the SENTENCING Transcript has Not been
Sent to the Court, because Petitioner did
SEND Full Transcript to The Public Defender
Office...

1 And then in this case, I mean, the firing of the
2 gun, and I got to be honest, sir, I mean, you were calm when
3 you loaded it, and when you shot it.

4 And -- I mean it's a -- it's a -- you know, it's
5 one thing -- you pointed the gun at the clerk. And then you
6 shot the gun. I know you shot into the wall next to him, but
7 it was just so calm to watch you load that and then shoot it.
8 And point it at him. So calculating. Just really elevates
9 the level of violence.

10 Sir, in ~~terms of Count 6, which is the handgun in a~~
11 ~~crime of violence, it's 10 years to the Division of~~
12 ~~Corrections. I will suspend all but five years. That will~~
13 ~~begin on June 14th, 2007.~~

14 In ~~terms of the armed robbery~~, you actually -- you
15 did more than just brandish the weapon in this armed robbery.
16 You actually used the weapon. ~~Count 17 For armed robbery,~~
17 ~~20 years in the Division of Corrections. Suspend all but~~
18 ~~10 years.~~ That sentence will be ~~consecutive~~ to the sentence
19 in Count 6. ~~So the overall sentence is 30 years, suspend all~~
20 ~~but 15 years.~~

21 Upon your release, sir, you have five years
22 supervised probation. You will have to pay the court costs.
23 I will waive the supervision fee. You'll provide a DNA
24 sample as required by law. Pay for any random urine tests.
25 Submit to and complete any alcohol and drug evaluation

P R O C E E D I N G S

THE COURT: State.

MR. DUNTY: State of Maryland versus Boisey Neal,
K-2007-1393. Michael Dunty on behalf of the State.

THE COURT: All right. Mr. Neal was before the
Court -- oh, sorry, Counsel, please identify yourself.

MR. TERECH: For the record, Pete Terech,
T-e-r-e-c-h, on behalf of Mr. Neal. Mr. Neal is seated to
my left at counsel table. Also at Defense table is
Annette Wagner, LCSWC, for the Office of the Public Defender.

~~THE COURT: All right. Mr. Neal was before the~~
~~Court on February 5th, 2008. Was tried and pled guilty to~~
~~Count 1, armed robbery and Count 6, handgun in a crime of~~
~~violence. Pre-Sentence Investigation was ordered.~~ Counsel,
did you get your copy because I don't have yours, Mr. Terech?

~~MR. TERECH:~~ I did not get a copy of the PSI.

THE COURT: Okay. I don't have the Defense copy.
Usually I have it. You want to come on and get a second
copy. You can look at that. I will probably need that back.
Do you want to take a few minutes and review that with your
client?

(Pause)

~~THE COURT: The State's Attorney indicated that~~
~~they were seeking a guideline sentence -- no, the State's~~
~~Attorney indicated the guidelines were 10 to 15 years. They~~

1 were asking for jail within that range. And that they would
2 not pursue a subsequent offender motion.

3 And the facts as presented to the Court involved
4 the -- the robbery of the clerk, at the Crown Gas Station
5 where it was alleged the Defendant pulled a handgun, a 9mm
6 semi-automatic.

7 The Court did see the video at the time. And a --
8 Mr. Dunty, you want to play that again. And the Defendant
9 was extradited from North Carolina apparently. Okay.

10 All right. Mr. Dunty. Mr. Terech, do you want
11 some time?

12 MR. TERECH: No, Your Honor. There's not that much
13 in the -- the PSI is very basic.

14 THE COURT: Well, yes. So --

15 MR. TERECH: It doesn't actually have any real --
16 insights --

17 THE COURT: Okay.

18 MR. TERECH: Of real recommendations. It just
19 says --

20 THE COURT: All right. Mr. Dunty, you ready to go
21 forward?

22 MR. DUNTY: I am, Your Honor. And given the fact
23 that I believe Mr. Terech is going to present some
24 information, through his social worker, if I could be heard
25 after that to address the issues as she may bring up, since I

1 calculating when the best time it is to approach the counter,
2 to pretend that he's purchasing a packet of gum, I believe it
3 was, to get the register open. And that is the perfect
4 opportunity to pull out the gun.

5 The clerk initially doesn't understand what the
6 Defendant said to him and instead of repeating it or giving
7 the clerk enough opportunity, enough time, or an opportunity
8 to understand what's going on to present the money, which the
9 clerk would have done, the Defendant ~~cocks the gun and shoots~~
10 ~~at the clerk. Missing him within inches and the bullet~~
11 ~~lodges in the cigarette packs behind him.~~

12 The Defendant insured that there were no other
13 witnesses inside the store. And in fact, after he shoots the
14 gun a female walks in and the Defendant is cognizant enough
15 to make sure that the gun is not seen. He looks at her and
16 tells her, ma'am, get out. And she leaves.

17 So, that's the ~~type of person~~ that was inside the
18 gas station at the time that he committed the crime, not a
19 person who is out on the street, high on drugs, looking for
20 drug money, rob someone -- not that that belittles those
21 crimes -- but he's raised it to the ~~next level~~ in actually
22 discharging a firearm at someone to intimidate them enough to
23 get the money. When he would have gotten the money by just
24 simply showing the gun and getting it.

25 His PSI shows to the Court the type of person that

he is. There is -- as Mr. Terech said, this is kind of a
~~standard PSI. What also is lacking in this PSI is really any~~
~~justification as to why he would commit such a crime, other~~
~~then, I use drugs and I drink. And the Court unfortunately~~
~~sees that often enough to know that that plays a role in,~~
~~cases. But in this case it didn't play a role in the fact~~
~~that he fired the gun at someone.~~

He's got four pending armed robberies in Baltimore.
 When he committed this armed robbery he fled to North
 Carolina. And in a statement he said that it was when he was
 down there, his cousin convinced him to commit yet another
 armed robbery. So this is not a person who realized he made
 a mistake in Anne Arundel County, quickly conforms his
 behavior to our standards and is now just paying the price,
 he continued on his criminal rampage down in North Carolina.

~~So, there's nothing in this PSI that justifies a~~
~~sentence, an active sentence, that is not within the~~
~~Sentencing Guidelines of 10 to 15 years.~~

~~THE COURT: All right. Mr. Terech.~~

MR. TERECH: Surprisingly I am not going to differ
 too much in the outcome with Mr. Dunty. ~~I agree -- What I~~
~~would ask for would be a sentence -- a flat sentence of 10~~
~~years to Parole.~~ I am going to go through the number of
 reasons for that.

~~Mister -- at the time we entered into this plea~~

1 ~~agreement. The Court may recall from -- or at least you check~~
 2 ~~your notes -- and reflect that we were permitted under the~~
 3 ~~plea agreement to argue for as little as five years. And I~~
 4 ~~believe part of this -- the first five years has to be~~
 5 ~~without parole no matter what the Court does. So -- and we~~
 6 ~~were permitted to argue for as little as that. But what I am~~
 7 ~~asking for the Court to do is to give him the 10 years at --~~
 8 ~~make the recommendation for Patuxent to send him there.~~

9 We had -- when we first -- when I first began to
 10 meet with Mr. Neal about this case, (A) he was about, I would
 11 say, (50) ~~pounds larger.~~ He was -- due to ~~some incident that~~
 12 ~~happened when he was in North Carolina, his insides had been~~
 13 ~~deteriorating and he's actually lost an awful lot of weight~~
 14 ~~and an awful lot of strength.~~

15 ← We file an NCR due to the long term toxicity effect
 16 ~~but there was not a situation where they could actually~~
 17 ~~determine that he didn't have any criminal responsibility.~~

18 I would ~~offer slightly~~ as far as the
 19 ~~characterization of the shooting.~~ I don't believe he was
 20 shooting at the clerk. I believe if he was shooting at the
 21 clerk, that was not a shot that he could have missed. They
 22 were closer -- it was -- it would be for me to this
 23 microphone, it was just right across the counter. I believe
 24 that he's shooting at the wall to discharge, to scare the
 25 person, and that is obviously ultimately what happened.

1 Either way there is no excuse or justification for
2 it, but I don't believe that there was a murderous intent at
3 that point. I believe that there is, at that point, the same
4 intent as showing it but you have somebody who is exceedingly
5 high and -- you know, when in doing this.

6 A lot of -- a lot is made about what money --
7 crimes being committed to get money for drugs. Crimes being
8 -- and you know, and drugs not in and of themselves being the
9 problem, is the money to get the drugs is what a lot of the
10 crimes relate to.

11 You know -- with the two exceptions that we see
12 over and over in our office coming across, where people are
13 committing crimes due to their intoxication, illicit
14 narcotics or the non -- other than -- drugs other than
15 alcohol -- where the actual mental state is so severely
16 changed that they're committing it as a result of their
17 intoxications are PCP and crystal meth. And that's what we
18 had with Mr. Neal, is a -- he went on about a three month
19 bender of crystal meth where he has no recollection of what
20 was going on.

21 ~~There was a series of other incidents.~~ Similar
22 charges in Baltimore City that arose as well. And ultimately
23 one morning when he had woken up sober ~~this~~ wife and he were
24 watching TV and his wife says, "You're on TV." And then --
25 and she saw the video that Mr. Dunty showed to the Court, and

2/7/80

1 that's what caused him to ~~flee to North Carolina~~ out -- in a
2 ~~panic~~ flight at that point. And then ultimately he's been
3 incarcerated down there.

4 He's been incarcerated now since ~~October 18th of~~
5 ~~2006~~ while we have been delaying, trying to get to the
6 ~~psychological evaluations~~. That's when he --

7 ~~THE COURT:~~ I am sorry, since when?

8 MR. TERECH: ~~October 18th of 2006~~. I believe that's
9 the date that he was picked up in North Carolina.

10 THE COURT: That sound correct, Mr. Dunty?

11 ~~MR. DUNTY:~~ That seems awful long considering that
12 the charges were filed in June. But --

13 MR. TERECH: But -- I think he was --

14 ~~THE COURT:~~ Charges were filed in ~~January of 2007~~.
15 So I don't know how --

16 MR. DUNTY: Well, then -- I mean -- that would make
17 sense --

18 THE COURT: -- he could be held on this since
19 ~~October of 2006~~.

20 MR. DUNTY: He was held in North Carolina and then
21 pending extradition hearing, so there is a chance --

22 THE COURT: I know but this Statement of Charges
23 were not filed until ~~January 17th 2007~~.

24 MR. DUNTY: Let me see if I can find the
25 extradition notice.

any appropriate recommendations. And she opined that the program for -- at the Patuxent Institute is -- would be the appropriate one for him.

Due to the length of -- they ultimately deal with their own parole, their own probation, their own structured release there, they -- you know, ~~so I don't believe that we would have to have any additional probation added on to a 10 year sentence because they do that themselves.~~ READ

I don't know if the Court has ever taken the tours there, in regards to what they do. I had the opportunity while I was in law school, actually, to go through and go through the program. It is very ~~comprehensive~~. But make no mistake about it, ~~it is still prison~~. You are still behind the bars.

You -- it takes ~~much longer~~ to get out and you are likely ending up doing every bit of ~~seven or eight years~~ ~~probably on the -- if you have a 10 year sentence, because you have to actually show the maturity level to get through it.~~ And they are not going to release you just into the -- just because you -- have -- accumulated however many ~~deduction credits~~, however many good says. They are -- in all senses a ~~structured rehabilitation program~~.

I am going to have a copy of the neuropsychological examination from Doctor Monroe for the Court to refer to as well. And Ms. Wagner can point to the various facets of it

1 was to why everything is appropriate;

2 But he has been diagnosed with very limited
3 ~~intellectual functioning~~ at this point which is due in large
4 part to the results of his ~~substance abuse~~. She indicated,
5 however, that he did have ~~good memory~~ but ~~poor functioning~~ at
6 this point.

7 He is ~~currently~~ on -- ~~being medicated~~ and they
8 have to -- ~~increase~~ -- they've had to have ~~doubling his~~
9 ~~anti-psychotic medication lately~~. So that shows that there's
10 a definite need for the ~~hospitalization aspect~~ as opposed to
11 if we put him in the ~~DOC~~ -- the Court has seen over and over
12 and over, both as a ~~private attorney~~ and as a member of the
13 Bench, the problems you have actually getting people to --
14 getting DOC to continue ~~appropriately medicating somebody~~.

15 ~~And it's taken a long time. And only through the~~
16 ~~constant intervention of Ms. Wagner to get the jail to~~
17 ~~appropriately medicate Mr. Neal~~. And that's what we would
18 like to see continue happen when he goes to the ~~Patuxent~~
19 ~~Institute~~, if the Court is so ~~inclined to follow our order~~.

20 ~~I was fully intending~~, you know, from the onset to
21 ~~come in here and ask for a five year sentence, but it's --~~
22 ~~been deemed that that's not what is appropriate for his~~
23 ~~level of treatment need, and that's why we're asking for the~~
24 ~~10 year sentence. The 10 year sentence is within the~~
25 ~~guidelines. It is within what the State is asking for.~~

~~And for that reason I would ask that the Court give~~
~~the 10 year sentence. The reason I would ask the Court not~~
~~to go too far above a 10 year sentence, is because sometimes~~
~~they will look at things administratively and say well, this~~
~~person has a 15 year sentence, we can wait two or three years~~
~~to put him in to Patuxent, and then he can still have the~~
~~10 years at that point. And they have that starting point.~~

And then you have somebody who is ~~decompensated~~ because
 they're not being ~~appropriately~~ medicated and then to begin
 fall apart.

~~They begin to fall apart and they begin to act~~
~~inappropriately with the prison guards in DOC. They get --~~
~~the charges, they get the infractions. Then they're deemed~~
~~to be the inappropriate risk to place at Patuxent and you~~
~~create -- and the nightmare gets created by itself because~~
~~they have -- because their own criteria of how they can set~~
~~something up.~~

Ms. Wagner has indicated to me that she would be
 able to, once a commitment order was prepared with the
 Patuxent Institute recommendation, that she would be able to
 begin the application process immediately so that she can
 help get all of the doctors' reports and recommendations to
 the facility so that they can get the review. And that's
 something that they don't normally have as available because
 they don't always have a -- you know, an independent

1 psychiatric -- or the neuropsychological evaluation. ~~They~~
 2 ~~just have a generic,~~ you know, referral process in many
 3 instances.

4 ~~And I think that Mr. Neal is somebody who is~~
 5 ~~definitely appropriate for,~~ definitely needs it. And you can
 6 see that he had the ~~potential~~ to -- ~~while he was out,~~ after
 7 ~~having been a criminal before, to turn his life around.~~ And
 8 but for the ~~introduction of crystal meth,~~ one evening when
 9 he was out drinking at -- the ~~downward spiral~~ which brought
 10 him here -- hopefully -- well, probably never would have
 11 started because at that point he had become a ~~responsible~~
 12 ~~businessman.~~ ~~He was paying taxes, he was employing other~~
 13 ~~people. He was involved with bringing other reformed inmates~~
 14 ~~and employing them and helping them turn themselves around.~~

15 ~~And -- you know, I think it's a shame to not give~~
 16 ~~Mr. Neal that chance. And while I could have been asking for~~
 17 ~~just the last year, I am actually asking for the last year.~~

18 And I -- so that he can get everything -- so that Patuxent
 19 can do what it can do.

20 ~~And if it turns out I am wrong,~~ Patuxent sees
 21 through that. You know, they wash people out the same as any
 22 other program does if people are ~~inappropriate.~~ So, with
 23 that I would ask the Court to give him that opportunity.

24 THE COURT: All right.

25 MR. TERECH: Ms. Wagner.

THE PETITIONER ASK THE HONORABLE POST CONVICTION COURT TO SEE
THIS LETTER FROM MS. NICOLE LOVE-KELLY THAT CLEARLY SUPPORTS WHAT
THE PETITIONER HAS TRIED TO EXPLAIN TO THE STATE'S ATTORNEY FOR
ANNE ARUNDEL COUNTY, THAT AN ILLEGAL SENTENCE HAS BEEN MADE TO RUN
CONSECUTIVE TO THE ANNE ARUNDEL COUNTY CASE. THE BALTIMORE COUNTY
SENTENCE WAS IMPOSED ON APRIL 3RD, 1995 AS A 13 YEAR SUSPENDED
SENTENCE. THE JUDGE IN BALTIMORE COUNTY RE-INSTATED 2 YEARS OF THE
3 YEARS THAT WERE SUSPENDED ON OCTOBER 6TH, 2008, AFTER THE
SENTENCE HAD ALREADY EXPIRED ON APRIL 3RD, 2008.

THE STATE DID OPPOSE THIS STATEMENT FROM A PRO-SE LETTER
THAT THE PETITIONER SENT TO THE HONORABLE JUDGE WILLIAM C. MURFORD.
THE STATE ATTORNEY FOR ANNE ARUNDEL COUNTY SAID THAT THE BALTI-
MORE COUNTY RE-IMPOSE SENTENCE IS PROPER.

PLEASE SEE STATES OPPOSITIONS.